

Message Text

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ORIGIN ARA-10

INFO OCT-01 ISO-00 L-03 EB-07 TRSE-00 OMB-01 COME-00

CIAE-00 INR-07 NSAE-00 PM-03 DODE-00 OPIC-03 /035 R

DRAFTED BY ARA/L:MGKOZAK

APPROVED BY ARA/PAN:PFMORRIS ' '

ARA/ECP:RSTERN

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R 222243Z JUL 75

FM SECSTATE WASHDC

TO AMEMBASSY PANAMA

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E.O. 11652: N/A

TAGS: ETEL, PN

SUBJECT: TRT TAX

REFERENCE: PANAMA 3619

1. DEPT. HAS DISCUSSED SITUATION WITH DAV MORRISEY OF TRT WASHINGTON OFFICE. THUS FAR, WE HAVE TAKEN NO POSITION IN DISCUSSIONS WITH MORRISEY, BUT SIMPLY ASKED FOR ADDITIONAL INFORMATION CONCERNING STATUS OF MATTER AND TRT'S INTENTIONS.

2. MORRISEY INFORMS US THAT TWO TAX RESOLUTIONS IN

QUESTION WERE ISSUED IN SPRING OF 1973. THEY COVER A NUMBER OF TAX CLAIMS ON BOTH CZ AND PANAMA OPERATIONS, INCLUDING INCOME TAX ON EARNINGS OF CANAL ZONE DIVISION.

TRT APPEALED TAX ON CZ OPERATIONS WITHIN FINANCE MINISTRY ON BOTH JURISDICTIONAL AND SUBSTANTIVE GROUNDS.

TRT ARGUED THAT GOP HAS NO JURISDICTION TO TAX CZ ACTIVITIES AND EVEN IF IT DID TAX WAS IMPROPERLY

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CALCULATED (GOP HAS ESTIMATED TAX LIABILITY SINCE TRT'S CZ RECORDS WERE NOT MADE AVAILABLE TO THEM).

3. TRT HAS BEEN INFORMALLY ADVISED THROUGH A CONTACT

IN THE FINANCE MINISTRY THAT A DECISION HAS FINALLY BEEN REACHED ON ITS APPEAL AND THAT IT HAS BEEN FOUND LIABLE FOR TAX ON CZ OPERATIONS. IT HAS NOT BEEN OFFICIALLY NOTIFIED OF THE DECISION, HOWEVER, NOR HAS THE MINISTRY TAKEN ANY OTHER FORMAL ACTION. MORRISEY ATTRIBUTES THIS SOLEY TO BUREAUCRATIC DELAY AND EXPECTS TO RECEIVE FORMAL NOTIFICATION IN THE NEAR FUTURE.

4. MORRISEY FURTHER NOTED THAT US ATTORNEYS IN NY AND RETAINED PANAMANIAN COUNSEL, MORGAN AND MORGAN, BOTH RECOMMEND PAYMENT OF RELATIVELY SMALL AMOUNT INVOLVED WITH STATEMENT THAT TRT DOES NOT ACCEPT GOP POSITION THAT TRT LIABLE FOR PANAMANIAN TAXES ON CZ OPERATIONS (A FORM OF PAYMENT UNDER PROTEST). RATIONALE IS THAT IN ORDER TO CARRY CASE FURTHER (SUPREME CT.), TRT WOULD HAVE TO POST THE AMOUNT CLAIMED ANYWAY, AND ITS CHANCES OF PREVAILING WOULD BE VERY SLIM.

5. CASE IS FURTHER COMPLICATED BY PENDING NEGOTIATIONS TO SELL PART OF OPERATION TO INTEL (WHICH IN TURN HAVE BEEN COMPLICATED BY ARREST OF GOP NEGOTIATOR COL. SEGURA); POTENTIAL GOP ACTION TO SEEK TRT PAYMENT OF EMPLOYERS CONTRIBUTION TO PANAMANIAN SOCIAL SECURITY FOR ITS CZ EMPLOYEES; AND POSSIBLE ATTEMPT TO APPLY STATUTE REQUIRING PANAMANIAN PHONE COMPANIES TO COLLECT FROM FOREIGN PHONE COMPANIES GOP TAX ON CALLS ORIGINATING IN PANAMA (POTENTIAL LIABILITY OF \$3-4 MILLION).

6. GIVEN DELICATE STATE OF TRT-GOP RELATIONS, LEGAL COSTS INVOLVED FOR TRT, AND LIKELIHOOD TRT WOULD ULTIMATELY LOSE, DEPT. RELUCTANT TO PRESS TRT TO FIGHT THIS PARTICULAR ACTION FURTHER, ALTHOUGH TRT SHARES OUR CONCERN RESPECTING PRECEDENTIAL EFFECT ON OTHER CZ FIRMS. AS A MINIMUM, HOWEVER, WE WOULD ENCOURAGE TRT'S INTENTION TO ACCOMPANY ANY PAYMENT WITH A PROTEST, AND WOULD WISH TO REITERATE TO GOP OUR LONGSTANDING POSITION ON GOP TAX AUTHORITY IN CZ.

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7. A SECOND ALTERNATIVE WOULD BE TO SEEK GOP COOPERATION IN POSTPONING INDEFINITELY FORMAL ACTION BY FINANCE MINISTRY ON TRT APPEAL. WE WOULD POINT OUT TO GOP

THAT SUCH ACTION WOULD RAISE SPECTER OF RETROACTIVE APPLICATION OF GOP TAXES TO CZ FIRMS UNDER A NEW TREATY, WITH THE ATTENDENT ADVERSE CONGRESSIONAL REACTION, AT A PARTICULARLY INOPPORTUNE TIME. IT WOULD ALSO BE SEEN IN CONGRESS AS EVIDENCE OF GOP UNWILLINGNESS TO ADHERE TO TERMS OF INTERNATIONAL AGREEMENTS. GIVEN FACT THAT CASE HAS ALREADY DRAGGED ON FOR 3 YEARS, A FURTHER DELAY WOULD NOT SEEM DIFFICULT TO MANAGE.

8. OUR PRINCIPLE RESERVATION WITH RESPECT TO APPROACH OUTLINED PARA 7 IS THAT DELAY MIGHT COMPLICATE TRT NEGOTIATIONS WITH INTEL. WE HAVE NOT RAISED THIS IDEA WITH TRT, HOWEVER, AND WOULD WISH TO DO SO BEFORE PROCEEDING WITH IT.

9. ACTION REQUESTED: DEPT. WOULD APPRECIATE YOUR ASSESSMENT OF OUR CHANCES OF OBTAINING GOP AGREEMENT TO AN INDEFINITE DELAY IN THE TAX ACTION. IF YOU CONSIDER CHANCES TO BE REASONABLY GOOD, WE WILL CONTACT MORRISEY TO DETERMINE WHETHER TRT WOULD HAVE ANY PROBLEMS WITH SUCH AN APPROACH. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TELECOMMUNICATION, POLICIES, NEGOTIATIONS, INCOME TAXES
Control Number: n/a
Copy: SINGLE
Draft Date: 22 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE172766
Document Source: ADS
Document Unique ID: 00
Drafter: ARA/L:MGKOZAK
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750253-1085
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197507106/baaaapzi.tel
Line Count: 124
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 12 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 SEP 2003 by SmithRJ>; APPROVED <30 OCT 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: ETEL, PN, PQ, US, TRT
To: PANAMA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006